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CITATIONS

671904—45

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 506

MAY S. TONKIN AND PEOPLES-PITTSBURGH TRUST COMPANY, EXECUTORS OF THE ESTATE OF JOHN B. TONKIN, DECEASED, PETITIONERS

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 44a–58a) is reported in 56 F. Supp. 817. The opinion of the Circuit Court of Appeals (R. 64–71) is reported in 150 F. 2d 531.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on July 3, 1945. (R. 72.) Rehearing was denied on August 2, 1945. (R. 84.) Petition for a writ of certiorari was filed on October 12, 1945. The jurisdiction of this Court is invoked

under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether a transfer in trust was intended to take effect in possession or enjoyment at or after the settlor's death under Section 811 (c) of the Internal Revenue Code where the grantor retained the income from an annuity for life plus a reversionary interest by operation of law in the entire corpus.

STATUTE AND REGULATIONS INVOLVED

The pertinent statute and regulations are printed in the Appendix, *infra,* pp. 10–11.

STATEMENT

The facts were in part stipulated (R. 4a–14a) and in part found by the District Court (R. 44a–51a) as follows:

The taxpayer is the estate of John B. Tonkin, a resident of Pittsburgh, Pennsylvania, who died testate on January 26, 1940. He left no children. His widow, two sisters, two brothers and a half-brother survived him. (R. 4a.)

By irrevocable deed of trust dated December 3, 1936, Tonkin transferred to a corporate trustee (1) 2,204 shares of Standard Oil Company of New Jersey stock, (2) three life insurance policies aggregating $36,300 and (3) other insurance policies—not here at issue—over which he retained

control, aggregating $40,000. (R. 4a–5a, 8a, 11a.)

Seven days later, on December 10, 1936, Tonkin executed his last will and testament to which a codicil was added on February 2, 1937. (R. 5a.)

The trust instrument (Ex. A, R. 27a–39a) instructed the trustee to invest in insurance policies if directed to do so by the settlor's wife, and in particular ordered the trustee to purchase single premium insurance upon the settlor's life if she directed it. The trust empowered the trustee to exercise any rights thereunder. The trustee was also empowered to exercise all rights under the policies which were transferred. Six days after the execution of the deed of trust, Mrs. Tonkin, by letter dated December 9, 1936 (Ex. F, R. 40a–41a), directed the trustee to purchase single premium life insurance policies, using the proceeds of the sale of *all* the Standard Oil stock. Pursuant thereto the trustee purchased five such policies. (R. 6a.) No medical examination or evidence of insurability was required. (R. 9a.)

At the same time the trustee purchased the single premium life insurance contracts, the settlor purchased non-refundable single premium life annuity contracts. (R. 8a–9a.)

The life insurance policies would not have been issued unless at the same time there were also purchased the single premium non-refundable life annuity contracts. (R. 9a.)

The trust provided that the income therefrom should be paid to decedent's wife during their joint lives. In the event the wife predeceased him then during the remainder of decedent's life the income was payable to his sisters and brothers, or their issue. After decedent's death the trustee was to pay to the wife an annuity of $9,000, or the full net income of the trust if it exceeded that amount. (R. 31a–32a.)

Upon the death of the survivor of the decedent and his wife the principal was to be divided into six equal parts, four of which were to be paid over to decedent's brothers and sisters or their issue, the survivors to take the portions of any deceased brothers and sisters. Two of the six equal parts were to be retained in trust and the income therefrom to be paid to two of the decedent's brothers. Upon their death, or if either predeceased the decedent, their share was to fall to the other brothers and sisters, or their issue. (R. 32a–33a.)

A gift tax return for the calendar year 1936 was filed by the decedent who reported therein the value of the 2,204 shares of Standard Oil stock and the value of an insurance policy not here in issue. (R. 11a.)

An estate tax return was filed for the decedent's estate. No part of the proceeds of the single premium life policies, the three life poli-

cies aggregating $36,300 (face value), or the cash in the trust fund was included in the taxable gross estate. (R. 10a–11a.) The Commissioner of Internal Revenue ruled that these items were to be included in the gross estate and assessed a deficiency of $44,282.37, plus interest, which was paid by petitioners. (R. 11a–12a.) Their claims for refund were rejected by the Commissioner. (R. 13a–14a.)

The District Court found that contemplation of death was not an impelling motive for the gifts made in 1936; that Mrs. Tonkin in instructing the trustee to purchase the life policies acted voluntarily; that the impelling motive of the decedent in purchasing the annuities was not to enable the trustee to purchase the life policies; that the annuities purchased by the decedent were complete transactions in themselves. It concluded that the transfers were not to take effect at or after death. (R. 47a–49a.) Judgment was entered for the taxpayers. (R. 59a.) The Circuit Court of Appeals reversed.

ARGUMENT

This case presents no conflict of decisions. It was correctly decided below and calls for no further review.

The decision of the Circuit Court of Appeals is in accord with the principles enunciated by this Court in *Fidelity Co.* v. *Rothensies,* 324 U. S.

108; *Commissioner* v. *Estate of Field,* 324 U. S. 113, and *Goldstone* v. *United States,* decided by this Court on June 11, 1945, No. 699, 1944 Term, which applied the doctrine of *Helvering* v. *Hallock,* 309 U. S. 106.

I

The foregoing cases clearly support the view that trust assets are to be included within a decedent's gross estate under Section 811 (c) of the Internal Revenue Code (Appendix, *infra*) whenever there has been reserved to the settlor a reversionary interest which delays, until his death, "the determination of the ultimate possession or enjoyment of the property. The existence of such an interest constitutes an important incident of ownership sufficient by itself to support the imposition of the estate tax." *Goldstone* v. *United States, supra.* Neither the remoteness of that interest nor the improbability of its returning the corpus to the settlor in any way affects the significance of its *existence.*

But petitioners—not denying the existence of the reversionary interest—urge that it was not expressly reserved by the settlor in the trust instrument but rather results merely by operation of law. It is thus sought to attach importance to the manner by which the settlor retains his "string". This Court has only too often rejected such "legal niceties" which abound in real prop-

erty law. The conveyancer's subtle silence, no less than his artful terminology, ought not to permit the shedding of the tax burden.

The reasoning of the foregoing cases would indicate that so long as the possession and enjoyment of the ultimate remaindermen are actually held in suspense until at or after the grantor's death, the particular device employed is of no consequence. Cf. *Estate of Leaman* v. *Commissioner*, 5 T. C. No. 84.

The applicable regulations (Section 81.17 of Treasury Regulations 105, Appendix, *infra*) clearly reject as immaterial the distinction for which petitioners contend. It is there explicitly stated that "it is immaterial whether the decedent's interest arose by implication of law or by the express terms of the instrument of transfer".

II

In view of the foregoing it is not necessary to consider petitioners' objection to the conclusion of the Circuit Court of Appeals that the transfer was "made in contemplation of death within the meaning of the pertinent section of the Revenue Act." (R. 71.) It is clear that the court understood the principles of the *Goldstone* case to control the result in the instant case. (R. 64.) It was not distinguishing between transfers made in

contemplation of death and those intended to take effect in possession or enjoyment at death. Either conclusion requires imposition of the tax. *United States* v. *Wells,* 283 U. S. 102, 116–117. The settlor's death was the operative fact necessary to a distribution of the corpus. This was, then, an *inter vivos* transfer possessing the indicia of a testamentary disposition. Its inclusion in the taxable gross estate was, therefore, required, and the question whether the *Goldstone* case also supports a conclusion that the transfer was made in contemplation of death seems immaterial.

III

In view of the foregoing, it appears that the validity of the decision below does not depend upon the conclusion of the Circuit Court of Appeals with respect to the indivisible character of the transaction. (R. 71.) However, ample support for the conclusion is found in the facts of the case. The intervention of the trustee was held to be a mere matter of form and of no substantial consequence. (R. 70.) Thus, the case falls clearly within the ambit of the *Goldstone* case and *Helvering* v. *Le Gierse,* 312 U. S. 531.

CONCLUSION

The decision below is correct. No conflict is presented nor is there any sufficient basis for re-

view by this Court. The petition should, therefore, be denied.

Respectfully submitted,

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NOVEMBER, 1945.